IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

R.S.A.No.2225 of 2000 (O&M)

Date of Decision : 11.5.2009

Smt. Kiran Devi

....Appellant

Versus

Smt. Sukhdai and others

...Respondents

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present : Mr.R.A.Sheoran, Advocate
for the appellant.

Mr.Sudhir Mittal, Advocate
for respondents No.1 to 4.

...

MAHESH GROVER, J.

This appeal has been filed with a delay of 921 days and the explanation which has been given by the appellant is that she was never in the know of the proceedings before the learned trial Court and therefore was unaware of the decree which was passed against her on 27.3.2003 against which the appeal preferred by the respondents No.1 to 4 was accepted. It is the case of the appellant that she was never served before the first appellate Court and therefore continued to be in dark about the proceedings. The report of the process server is reported as under :-

"On reaching the village Juglan a copy of the

summon was served to Krishan Kumar son of Chandgi Ram and on enquiry it was found that Smt.Kiran Devi widow of Umed Singh had left the village since last many months and not residing in this village....”

Despite this report, the learned first appellate Court passed the following order and proceeded against the appellant ex-parte :-

“Power of attorney by Sh.S.S.Verma, Advocate is filed on behalf of respondents No.1,4, and 5. Notice on respondents No.2 & 3 received back duly served but they failed to appear. After giving last call at 1.15 p.m. respondents No.2 & 3 are proceeded ex parte. Lower court file is not received. Let it be awaited for 2.9.2003.”

The learned first appellate Court thereafter passed the impugned order in the absence of the appellant.

It is contended by the learned counsel for the appellant that the impugned order is unsustainable in the eyes of law as the appellant was never served in the proceedings and therefore she was deprived of the opportunity of hearing. It is also her case that the present delay of 921 days primarily occurred for the reason that she was never aware of the proceedings before the first appellate Court which has resulted in adverse decree against her.

On the other hand, learned counsel for respondents No.1 to 4 has contended that the appellant was proceeded against ex-parte even before the trial Court also on 13.3.2003 and an order to this effect was passed by the trial Court when the appellant after filing the written statement did not participate in the proceedings. He then

contended that in view of this fact the present proceedings are malicious and have been filed only to defeat the rights of the respondents and that the appellant is not serious in contesting the proceedings.

I have heard the learned counsel for the parties and have perused the impugned orders.

The report of the process server and the consequent order passed by the first appellate Court has not been disputed by the learned counsel for respondents No.1 to 4. Therefore, the finding recorded to this effect is that the appellant was not served in the appeal. The principles of natural justice would require that she be heard before the matter is adjudicated upon. It is the settled principle of law that no adverse order can be passed against a person without affording him opportunity of hearing. The rule of *audi alteram partem* is abundantly clear. Therefore, the matter has to be remanded back for decision afresh.

The question of law that arises for consideration of this Court is "as to whether any adverse order can be passed against a person without affording him an opportunity of hearing and whether the complete misreading of the report of process server would result in grave miscarriage of justice to the appellant?"

In view of the above, this Court is of the opinion that the principles of natural justice have been grossly violated and the question of law has to be answered in the affirmative in favour of the appellant to hold that an adverse order passed without hearing a person resulted in the violation of principle of audi alteram partem

and caused miscarriage of justice. The matter is thus remanded back to the first appellate Court for decision afresh after ensuring that all the parties to the proceedings are adequately heard.

Before parting with the order, this Court has noticed that the conduct of the appellant is not above board. She has participated in the proceedings before the trial Court and thereafter defaulted without any sufficient cause and was proceeded against ex-parte on 13.3.2003. This lends credence to the contention of the learned counsel for respondents No.1 to 4 that the appellant is interested in only defeating his rights and not serious in pursuing the proceedings. In the opinion of this Court, the conduct of the appellant demonstrates that she has merely wasted the time of Court by not seriously pursuing her case when she was served before the trial Court. In this view of the matter it is deemed appropriate to burden the appellant with a cost of Rs.10,000/- out of which Rs.5,000/- shall be given to the respondents and Rs.5,000/- to be deposited before the State Legal Services Authority, Haryana.

Disposed of.

11.5.2009 (MAHESH GROVER)
JUDGE

dss